

Appln. No. 10/759,493
Docket No. 340426-900301 (Formerly 1040636-900301)
Response to Office Action of June 15, 2005

REMARKS/ARGUMENTS

The Amendments to the Specification

The specification has been amended to include reference to structural roots. As paragraph [0031] of the specification as originally filed states that the terms "tree roots" and "roots" refer to "any root for a tree," the term "structural roots" is included therein, and is thus not new matter.

The Objections to the Claims

Claims 1, 3, 4, 5, 22, and 24 have been amended as requested.

The Rejections to the Claims

Various of the claims have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,810,510 to *Urriola* ("*Urriola '510*") and/or U.S. Patent No. 6,779,946 to *Urriola et al.* ("*Urriola '946*"). Various of the claims have also been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Urriola '510* and/or *Urriola '946*.

Applicant respectfully traverses these rejections, noting that neither *Urriola '510* nor *Urriola '946* discloses all elements of the claims as amended. More specifically, neither *Urriola* reference discloses cells capable of accommodating the natural growth of structural roots within the cells. In addition, both references teach away from Applicant's claims.

The Urriola References

Urriola '510

Urriola '510 discloses a water drainage and purification system. Various embodiments are disclosed, but each essentially has a number of porous tanks 4, 16 with perforated walls 8 that filter water and to collect it within (Col. 3:44-57). The water then infiltrates into the soil.

Of note, the tanks 4 of *Urriola '510* are designed to keep tree roots out, rather than allowing the natural growth of structural roots within. This is evidenced by a layer of geotextile material 9 that covers the entire perforated walls 8 (Col. 3:61-62), providing the porous surface required to collect water while keeping out solids such as silt. It is well-known that such

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geotextile material 9 acts as a barrier to root growth, rather than allowing roots to grow naturally within the tanks 4. It is also known that geotextile material is used throughout the drainage industry to keep large roots out of drainage systems. Small roots can penetrate some geotextiles but these roots are girdled by the fabric and cannot develop into large structural roots.

Urriola '946

Urriola '946 discloses a somewhat similar drainage structure 1. Various embodiments are disclosed, but each essentially has an upper plate member 5, lower plate member 6, and spacer members 7 with apertures 16 that allow for grass to grow within, and also allow for water drainage (Col.5:37-52).

It can be observed that the spacer members 7 of *Urriola '946* are designed to allow for smaller grass roots to grow within, but not larger tree roots. Like *Urriola '510*, the structures 36 are wrapped in geotextile sheet 39 so as to keep out tree roots and other objects (Col. 8:54-57). Accordingly, *Urriola '946* allows small grass roots to grow within, but not larger tree roots.

The Rejections under 35 U.S.C. § 102(e)

From the above, neither *Urriola '510* nor *Urriola '946* discloses structures capable of supporting the natural growth of structural roots within. Even if the references disclose the growth of small roots such as grass roots or very small tree roots, neither reference discloses structures capable of handling significant tree root incursions, such as by the larger structural roots that anchor the tree in its soil. Certainly, none of the figures displays larger structural roots within the structures of *Urriola '510* or *Urriola '946*, and indeed each reference discloses geotextile material for keeping such larger structural roots out. As above, it is well-known that such geotextile material is designed to prevent the growth of large roots therethrough. For example, it is known that the nursery industry uses geotextiles around root balls of young trees to keep structural roots from growing outside the limit of the root ball to be shipped to the consumer. These textiles are required to be removed before planting in the tree's permanent location so that the tree can develop a wide spreading system of structural roots after planting.

In contrast, independent claims 1, 22, and 44 as amended recite structures configured "to accommodate natural growth" of structural roots within. Claims 1, 22, and 44 are thus patentable over the references for at least this reason.

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As the remaining claims each depend from claim 1, 22, or 44, they are also patentable over *Urriola '510* and *Urriola '946* for at least this same reason. In addition, various of the dependent claims also contain further limitations not disclosed by *Urriola '510* and *Urriola '946*. For example, claims 10 and 29 disclose a cell inspection port, and claims 15 and 27 disclose a water wick, neither of which is disclosed by *Urriola '510* or *Urriola '946*. Accordingly, claims 10, 29, 15, and 27 are patentable over the references for at least this additional reason.

The Rejections under 35 U.S.C. § 103(a)

As above, neither *Urriola '510* nor *Urriola '946* discloses all elements of Applicant's claims as amended. In addition, the references teach away from Applicant's claims.

As above, both *Urriola '510* and *Urriola '946* employ a layer of geotextile material 9 for the express purpose of keeping out debris and other objects such as tree roots. Even if the geotextile material 9 allows small roots to penetrate, it is well-known to keep out larger tree roots such as structural roots. Accordingly, both *Urriola '510* and *Urriola '946* teach away from Applicant's claims, which recite the accommodation of natural structural root growth within structural cells.

In addition, *Urriola '946* is directed toward cells for containing grass and small plants (e.g., Col. 6:48-54). Such "grass cells" cannot have hardscape placed over them, or the grass will be cut off from sunlight and die. Accordingly, *Urriola '946* teaches away from Applicant's claims, which recite the placement of structural cells beneath hardscape.

As both references teach away from Applicant's claims, the rejection under 35 U.S.C. § 103(a) should be withdrawn, and Applicant's claims should be considered patentable over the combination of *Urriola '510* and *Urriola '946*.

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CONCLUSION

In view of the above, it is respectfully submitted that Claims 1-46 are now in condition for allowance.

The Examiner is invited to call Applicant's attorney at the number below in order to speed the prosecution of this application.

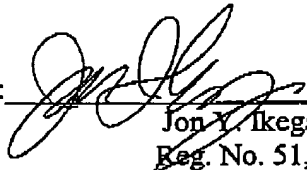
The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 07-1896, referencing docket number 1040636-900301.

Respectfully submitted,

DLA PIPER RUDNICK GRAY CARY USA LLP

Date: December 15, 2005

By: _____


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